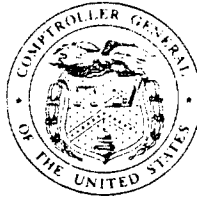


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

PLM II

FILE: B-198060

DATE: November 10, 1980

MATTER OF: Marcos A. Zappi - [Loan Origination Fee CLAIM]

DIGEST: A transferred employee paid a lump-sum loan origination fee that was described as a charge to defray the cost of originating and processing the loan. Charges contained in such a lump-sum fee may only be reimbursed if they are excludable from finance charges under Truth in Lending Act by Regulation Z, 12 C.F.R. 226.4(e), reasonable in amount, and itemized to show the portion of the fee allocable to each item. To the extent that a portion of the loan origination fee is not itemized and a specific amount allocable, it must be presumed to be finance charges and nonreimbursable.

By a letter dated February 25, 1980, Marcos A. Zappi appealed Settlement Certificate No. Z-2818861, issued January 25, 1980, which disallowed his claim for reimbursement of a loan origination fee in the amount of \$622 incurred in connection with the purchase of a residence following a transfer of duty station.

The record shows that Mr. Zappi, an employee of the Geological Survey, Department of the Interior, was transferred from Vicksburg, Mississippi, to Lake Charles, Louisiana, on or about May 15, 1978. Incident to this transfer he purchased a residence in Lake Charles using VA financing. His agency suspended payment of his claim for a \$622 loan origination fee in connection with the house purchase on the grounds that it is a finance charge. Mr. Zappi appealed this determination to our Claims Division on September 18, 1979, resulting in the aforementioned Settlement Certificate which likewise found the loan origination fee to be a finance charge.

In his appeal to the Comptroller General Mr. Zappi cites two letters which he contends contradict the previous determinations. The first is a letter dated October 26, 1978, from Troy & Nichols, a private

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mortgage company with branch offices in Lake Charles through which Mr. Zappi obtained financing. That letter states in pertinent part as follows:

"This letter is to inform you that the origination fee charged to you at the time your VA home loan was closed is our fee for originating and processing your home loan application. It is not prepaid interest, but a fee that every lending institution is allowed to charge to defray the cost of originating and processing."

The second letter, dated June 22, 1979, is from the Regional Office, Veterans Administration, in New Orleans, Louisiana, which states:

"Your file shows you paid what is commonly referred to as an origination fee of \$622. This is not a finance charge. It is really a closing cost and is included under VA regulation 4312 subparagraph 7 covering allowable fees and charges. See paragraph 7a(9) underlined in red, copy attached. Put simply, Washington realized that in the various counties, cities and states throughout the country there would be many different types of miscellaneous but acceptable closing costs. It would be an impossible task to attempt to itemize them all. The simplest solution seemed to be to allow a lender to collect a flat charge of one percent (in your case \$622) of the loan provided this was in lieu of all other miscellaneous items such as photographs, amortization schedule, copy to the assessor or to notarial archives, etc."

Notwithstanding the statements contained in the above-quoted letters regarding the nature and purpose of the loan origination fee, reimbursement of a Federal

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employee for expenses in connection with the purchase of a residence incident to a permanent change of duty station is determined by Chapter 2 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). FTR para. 2-6.2d provides in pertinent part, that:

"* * * no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Regulation Z, 12 C.F.R. 226.4 (1977), states, in part, as follows:

* * * * *

"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

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"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z expressly categorizes loan fees as finance charges incident to or as a condition of the extension of credit. Our position that loan origination fees are finance charges under Regulation Z and, therefore, not reimbursable, is long-standing and is required by FTR para. 2-6.2d. Matter of Anthony J. Vrana, B-189639, March 24, 1978. This requirement is based on the rationale that a fee which is stated as a fixed percentage of the amount loaned without reference to the type or extent of services actually performed by the lender is more in the nature of a charge for the hire of money than it is a charge for costs and services incurred in the course of processing the loan. Where it is claimed that the loan origination fee is levied to reimburse the lender for costs or services that are expressly excluded from the Regulation Z definition of a finance charge, we require an itemization of the allegedly reimbursable items to ensure that reimbursement is authorized only for charges which are not part of the finance charge and which are otherwise reimbursable under FTR para. 2-6.2d. Matter of James J. Beirs, B-184703, April 30, 1976.

Accordingly, since there is no itemization of the charges in the loan origination fee paid by Mr. Zappi, he may not be reimbursed for any part of that fee.

Nancy R. Van Cleave

For the Comptroller General
of the United States